

**STATEMENT OF WILLIAM P. TAYMAN, JR.  
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FOR  
THE PRESIDENT'S COMMISSION ON THE  
UNITED STATES POSTAL SERVICE  
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**Workers' Compensation Claims and the Federal Employees'  
Compensation Act**

Good afternoon. I want to thank the Commission for this opportunity to share information on the impact of workers' compensation expenses on Postal Service finances.

My current position, Manager, Corporate Financial Planning, provides me the opportunity to interface on the financial consequences of job related injuries. I have testified before the Postal Rate Commission on our workers' compensation costs in various rate case filings and am well versed in the methodology used in determining the actuarial liability of a work related injury. I have a basic understanding on various aspects of the workers' compensation program as administered by the Department of Labor as well as specific Postal Service programs to manage and control these costs.

My goal today is to provide an overview of the magnitude of these costs to the Postal Service and to provide comments on legislative reform opportunities. The Commission may want to consider these proposed reforms in its recommendations.

Worker's compensation benefits are provided as a "no-fault" remedy for workers who are injured in their employment. "No-fault" simply means that an injured worker does not have to prove that a work injury was someone else's fault in order to receive benefits for an on-the-job-injury. However, workers' compensation benefits are an exclusive remedy. Employees are not permitted to seek recovery for work-related injuries through Federal tort liability statutes or other civil actions.

Clearly, the best way to limit, or quite frankly prevent, workers' compensation costs is to eliminate work related injuries. In this regard, safety programs have always been and continue to be a Postal Service priority. However, it is unrealistic to assume that job related injuries could be totally done away with. Accordingly, my focus is on how these costs might be controlled.

Workers' compensation expenses represent a sizeable portion of total Postal Service compensation and benefit costs. For the 32 years since Postal Reorganization, the annual expense for job related injuries has averaged nearly 2 percent of total compensation and benefit costs. In its most recently completed fiscal year, 2002, these costs accounted for 2.9 percent or \$1,524 million of total compensation and benefit costs of \$51,557 million. At the end of 2002, the total liability for future workers' compensation costs reflected in the Postal Service audited financial statements was \$6,525 million. In addition to the \$1.5 billion expense, an additional \$800 million was paid in compensation and benefits costs for employees with work related injuries in either limited duty or rehabilitation positions.

These amounts do not include the liability for Post Office Department (POD) claims incurred before postal reorganization. Under the Postal Reorganization Act of 1971, the U.S. Government remained responsible for payment of all POD workers' compensation claims incurred before July 1, 1971. However, under the Balanced Budget Act of 1997, the remaining liability for these POD claims costs was transferred to the Postal Service. In 1997, the present value of the liability for these claims was estimated at \$258 million and recorded as an expense by the Postal Service. The liability at the end of fiscal year 2002 for POD claims was \$185 million.

As provided in Title 39, United States Code, the Postal Service is subject to the Federal Employees' Compensation Act or FECA. The FECA is a comprehensive workers' compensation law that provides medical and death benefits, income replacement, and other services to federal employees with work-related injuries. Accordingly, the workers' compensation program for Postal Service employees is managed by the Office of Workers' Compensation Programs, OWCP, of the Department of Labor, and is largely outside of the control of postal management.

Under this program, the Postal Service is billed annually by the OWCP for reimbursement of all payments for medical benefits, wage-loss benefits (up to 75 percent of lost wages, tax free), schedule awards for loss of use of a scheduled body part and vocational rehabilitation costs. For the first 45 days following a workplace injury, the Postal Service continues to pay the current salary of an injured employee. Effectively, this set of funding mechanisms results in the Postal Service self-insuring for workers' compensation.

Self-insurance, coupled with Postal Service compliance with Generally Accepted Accounting Principles in its financial reporting, requires that Postal Service financial statements reflect a liability for the present value of estimated future payments on behalf of claims incurred in any fiscal year. An estimation model that uses data regarding cost per claim, number of claims, history of similar claims and other actuarial factors determines this actuarial liability.

The rate at which claims are processed and the consistency of that rate can have a significant impact on the Postal Service liability estimation for workers' compensation costs. If back-logs in claim processing occur, this will lead to understatement of the liability estimate for filed claims. On the other hand, an acceleration in claims processing will have the opposite impact and cause an increase in the estimated liability.

Postal Service workers' compensation expense is comprised of four components. These are:

- (1) the net present value of the total estimated long-term liability for claims related to current year injuries, including current year payments,
- (2) actuarial and model adjustments to the estimate of the existing liability for claims that occurred in prior years,
- (3) the pro-rata share of OWCP administrative expenses, and
- (4) adjustments to the estimate of the existing liability for claims that occurred prior to postal reorganization.

The magnitude of workers' compensation costs has been a concern since the early days of postal reorganization. Although these costs were moderate in the years immediately

following postal reorganization, they grew significantly with the November 1974 amendments to the Federal Employees Compensation Act. These amendments added a Continuation of Pay (COP) provision for injured employees and provided employees with free choice of physicians. Under COP provisions, employees are entitled to receive up to 45 days of full pay from their employer before they qualify for compensation payments under FECA.

These amendments also eliminated the reduction in the level of FECA compensation benefits at age 70 and changed the 3-day waiting period before benefits could be paid. The waiting period was moved from 3-days after the date of injury to 3-days after the end of the 45 day COP period.

Following enactment of these amendments, Postal Service workers' compensation costs increased from \$94 million in 1974 to \$629 million in 1977. This amount does not include nearly \$28 million paid in COP costs in 1977. At the end of 1977, the cumulative long-term liability workers' compensation reached \$1.2 billion.

In recent years, the growth in workers' compensation costs has been heavily influenced by increasing medical costs as well as the increased difficulty in returning employees and sustaining rehabilitated employees in postal limited duty positions.

As the Postal Service increases productivity, there has been a decline in the number of career postal positions. Career Postal Service complement has declined from 797,795 employees at the end of FY 1999 to 738,271 employees as of April 2003, a reduction of over 59,000 positions. Automation of mail processing and support operations has eliminated much of the manual clerical work that previously could have been assigned to limited duty positions. Accordingly, it is more difficult to return injured employees to productive on-the roll positions. And, despite a 10 percent reduction in the number of reported injuries between 2000, when 87,672 injuries were reported, and 2002 when 78,777 were reported, the number of paid compensation cases has grown

Total compensation cases have increased nearly 16 percent between the end of 1999 and 2002. During this period, paid cases for lost-wages went from 12,182 to 14,127. Much of this increase was caused by an increase in the number of paid compensation

cases for injuries that occurred in the prior 3 to 5 years. These data points tend to support the premise that the FECA workers' compensation program has become a retirement system for some postal employees.

A March 2003 report titled "Retirement Eligible Postal Service Employees on the Workers' Compensation Periodic Rolls" completed by the Postal Service Office of Inspector General disclosed that Postal Service employees over age 55 make up 49 percent or 6,500 of the approximately 13,400 employees on the periodic or long-term rolls of OWCP. Fifty-five is the age at which employees are first eligible for voluntary retirement. More than half, 3,543 of those employees over age 55 are at least 65 years old.

Another finding included in this report was the dramatic increase in administrative costs charged the Postal Service by the Department of Labor. These costs have increased 137 percent from \$19 million in 1997 to \$45 million in 2002. This report concludes that "legislative reform to the Federal Employees Compensation Act (act) is needed to address concerns that the act has become, in effect, a retirement system for some workers' compensation beneficiaries."

A critical public policy issue is the level of benefits necessary to protect workers against the loss of income from work-related injuries. A balancing act is required between the worker's interest in substantial income benefits and the potential loss of incentive for rehabilitation if benefit payments are too high.

A 1998 General Accounting Office report titled "Federal Employees' Compensation Act – Percentages of Take-Home Pay Replaced by Compensation Benefits" found that FECA benefits replaced, on average, over 95 percent of the take-home pay that beneficiaries would have received had they not been injured. The FECA lost-wage compensation benefit is tax free and equals either 66-2/3 of base pay or 75 percent of base pay for injured employees with dependents. Compensation benefits equaled between 80 and 99 percent of take-home pay for nearly 70 percent of these beneficiaries and amounted to 100 percent or more in 29 percent of the cases. Included in this GAO review were letter carrier and mail distribution occupations within the Postal Service.

Of the 30,000 sampled beneficiaries included in this study, 65 percent were over 55 years old and the average age was 61. The study also found that the longer recipients had been on the rolls, the greater their benefits in relation to their take-home pay, had they continued working. This is because the FECA cost-of-living adjustments were greater than the pay increases individuals would have received had they not been injured.

In a April 1996 GAO report, "Workers' Compensation – Selected Comparisons of State and Federal Laws," it was disclosed that FECA compensation benefits were more generous than those provided under state laws and the Longshore and Harbor Workers' Compensation Act. This report found that 35 states calculated benefits at 66-2/3 percent of wages while FECA calculated benefits as high as 75 percent of wages. In addition, maximum weekly benefit authorized by FECA, which is set at 75 percent of a GS-15 step 10 salary, currently \$110,682, exceeds the maximum benefits under all other laws. At the time of the GAO review, the maximum weekly benefit amount under other laws ranged from 27 to 60 percent of the FECA maximum.

Also, FECA is the only law that provides continuation of pay for traumatic injuries. Additionally, all other laws provide that injured employees must be out of work for 3 to 7 days before they can receive wage-loss benefits. And finally, 25 states and the FECA allow injured employees to choose their treating physicians without restrictions. In the other states, employees or employers select physicians from a state agency-approved list. In state programs where the employer chooses the physician, medical costs are between 7 and 11 percent less than those which leave physician choice to the employee.

The Department of Labor has been a helpful partner in collaborating with the Postal Service in various programs designed to lower workers' compensation costs. The Postal Service rehabilitation program to return injured employees to work has been instrumental in reducing these costs. As a result, at the end of FY 2002, there were over 12,000 employees who were previously on the OWCP workers' compensation rolls assigned to rehabilitation positions.

To enhance rehabilitation opportunities, last summer the Postal Service explored with OWCP a process to place injured workers with other employers. A special program was developed to place employees with private industry employers. To date, 369 injured postal employees on the periodic rolls were identified as candidates for OWCP rehabilitation outplacement and 11 individuals have been placed in positions from this original list. Returning employees to a productive status not only assists in lowering compensation costs for lost wages, but it also boosts the morale and self-esteem of the re-employed claimants.

Another effort coordinated with OWCP relates to a Postal Service contract with the nation's largest Preferred Provider Organization (PPO), First Health. The program is designed to lower medical costs of injured employees by taking advantage of discounts negotiated by First Health with physicians and hospitals. Network provider bills are paid at agreed contract rates that are usually substantially lower than what OWCP allows. This program was implemented nationwide in July 2002. Since inception, over \$32 million in medical costs have been avoided by the Postal Service.

The Postal Inspection Service works with the OWCP in identifying the small percentage of postal employees and medical providers that abuse the workers' compensation system. In 2002, the Postal Inspection Service identified 378 individuals defrauding the program and arrested 45 employees. The activities and results of these efforts, that have saved the Postal Service millions of dollars, are described in more detail in their 2002 annual report beginning on page 35.

Despite the encouraging results of these and other related programs, much more is required in order to reduce the current level of workers' compensation costs. Over the years, there have been various proposals to enhance the federal workers' compensation program. As noted, in many cases, FECA provides benefits that are more generous than those received by private sector employees covered under state workers' compensation laws.

Accordingly, the Postal Service believes that changes in the Federal Employees' Compensation Act would be in order. In 2002, the Department of Labor drafted

legislation to amend the FECA. The amendments were designed to eliminate certain benefit provisions that create disincentives to return to the workplace for workers who are able to do so by remunerating them at rates higher than non-injured employees or retirees. Included in the draft legislation were the following items supported by the Postal Service:

- ❑ Conversion Benefit - compensation for new injuries or new claims for disabilities would be converted to a lower benefit at age 65. This “conversion benefit” which is set at 50 percent of monthly wages is designed to approximate the basic pension income of an uninjured worker.
- ❑ Compensation Rate – increase basic compensation from two-thirds to 70 percent and eliminate augmented compensation at 75 percent for all new claims. Accordingly, a single compensation rate would be applied for all recipients and the 70 percent proposed is lower than the current Postal Service average of 73 percent.
- ❑ Waiting Period - move the 3-day waiting period during which an injured worker is not entitled to compensation to the point immediately after the injury, consistent with virtually all state workers’ compensation systems.
- ❑ Third Party Recovery – allow for recovery of COP paid by employing agencies when another party is responsible for the injury.

These proposals are a step in the right direction, but they may not go far enough to significantly control costs. Additional cost reductions would be achieved if these proposals were to be applicable not only to new claims but to all existing claims. The 70 percent compensation rate, while lower than the 73 percent average paid on behalf of injured postal employees, would still exceed the uniform two-thirds rate paid under the Longshore and Harbor Workers’ Compensation Act and most state laws.

Additional discussion on these and other proposals to reduce Postal Service injury compensation costs are contained in Appendix O on pages 23 through 25 of the Transformation Plan. I would be pleased to answer any questions at this time.